IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2203 OF 2004

Haminda Farooque Haji
Adamji Bandukia ... Applicant
versus
Mohammed Farooque Haji Adamji
Bandukia ... Respondent

Mr.Flavia Agnes for applicant.
Mrs.M.M.Deshmukh, APP for State.
Mr.Piyush Shah for respondent no.1.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 11th October 2006

PC :

1. The challenge in this petition by the original petitioner-wife is to an order passed on 3rd September 2004. The order passed on 3rd September 2004 directs as under :-

> "The Application is allowed.
>
> The Respondent/Mohd. Farooque shall pay Rs.1,000/- per month towards the maintenance of the petitioner/Hamida.
>
> For time being he shall pay the same from the date of application i.e. from 22nd March 2002 to 31st July 2002 till preliminary issue is decided.
>
> No orders as to costs."

I would have been inclined to go into the rival contentions and the plea of the wife that the maintenance is meagre had the preliminary issue not been decided. Both sides agree that the preliminary issue is now answered in April 2006.

2. The amount of Rs.4,000/- has been paid under the order reproduced above. The wife is not satisfied with the quantum and she states that despite the ruling on the preliminary issue her right to claim maintenance survives. In my view, this issue will not be gone into when the order under challenge is on the application for maintenance u/s 125 of Cr.P.C.. These proceedings are by the applicant-petitioner wife who is Muslim so also the respondent. In such circumstances, if the wife still has a remedy to recover the amount of maintenance from the respondent-husband, that remedy would not be affected in any manner and it would be open for the petitioner-wife to file such proceedings as are permissible in law to claim maintenance. Equally, it would be open for the respondents to contest the same. Petition dismissed with above clarification.

(S.C.DHARMADHIKARI, J.)